IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.Rev.Pet.No. 3383 of 2007()

SC.655/2005 of ADDL. SESSIONS FAST TRACK COURT (ADHOC-II), THRISSUR

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REVN. PETITIONER: ACCUSED

AJO, S/O.DEVASSYKUTTY,
PUTHEN AMBOOKAN HOUSE,
VETTILAPPARA, PARIYARAM VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3383 OF 2007

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Dated this the 24th day of September, 2007.

ORDER

The revision petitioner, who is the accused in S.C No. 655/2005 on the file of Additional Sessions Judge(Fast Track-II), Thrissur, feels aggrieved by the refusal on the part of the court below to pass an order on the petition filed by the revision petitioner under Section 227 Crl. P.C seeking his discharge and also by the adjournment of his application (MP 1766/2006) filed for subjecting him and the alleged victim to DNA test and to get a report and to discharge the accused in case the report is in favour of the petitioner. The court below had adjourned the said petition after the closing of the prosecution evidence.

2. The case of the revision petitioner is that he never had any sexual intercourse with the alleged victim and the case of the prosecution that consequent on the sexual intercourse which the revision petitioner had with the victim, she delivered a child can be demonstrated to be false if the DNA report is in favour of the revision petitioner. Assuming that the petitioner's request to subject him to DNA test is entertained and a DNA report to the effect that the child

born to the victim is not that of the accused is obtained by the court, the said report cannot be looked into by the court at the stage of hearing under Section 227 Crl.P.C. [See **State of Orissa v. Debendra Nath Padhi** (2005(1) SCC 568)]. When the Sessions Court cannot look into any material produced or cause to be produced by the accused at that stage, no useful purpose will be served by allowing the said request at the present stage. Hence, the court below was justified in adjourning his application to a stage after the closing of the prosecution evidence.

3. The failure to pass orders on the discharge petition filed by the petitioner also cannot be faulted since the ground on which the discharge petition was based is founded on the result of the DNA test to be conducted in future. As there is material on record prima facie to suggest that there is sufficient ground for proceeding against the accused, the court below will be well within its authority to frame the charge against the accused. Hence, this revision petition is dismissed without prejudice to the right of the petitioner to seek a DNA test at the appropriate stage when he is called upon to enter on his defence.

V. RAMKUMAR, JUDGE.

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